

UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA, :
Plaintiff, :
STATE OF WEST VIRGINIA, :
Intervenor: :
v. : CIVIL ACTION NO.
: 83-0127-W(K)
KOPPERS COMPANY, INC. and :
WHEELING-PITTSBURGH STEEL :
CORPORATION :
Defendants:

CONSENT DECREE

Introduction

Koppers Company, Inc. (Koppers) and Wheeling-Pittsburgh Steel Corporation (Wheeling-Pittsburgh) own adjacent manufacturing facilities in Follansbee, West Virginia. The Koppers facility is a coal tar processor which produces organic chemicals, creosote and industrial pitches. The Wheeling-Pittsburgh facility primarily produces coke for use in the production of steel. The common border of these facilities is approximately 2000 feet in length.

The groundwater beneath the Koppers facility has been detected in two separate water bearing zones. The groundwater in the upper zone occurs in a 15 to 20 foot thick layer of artificial fill material. It is referred to as perched due to its separation from the groundwater in the lower zone by a 5 to 10 foot layer of clay and clayey silt. The lower groundwater zone occurs in alluvial deposits consisting of gravel and sand which underlie the clay and clayey silt layer.

This decree addresses a number interrelated situations which have developed at these facilities. Over a long period of time a portion of the perched groundwater zone under the Koppers facility has become contaminated with phenolic compounds and other pollutants. Due to the intersection of the Wheeling-Pittsburgh coal pits with the perched groundwater zone at the common border of these facilities, groundwater from the perched zone flowed from beneath the Koppers facility onto the Wheeling-Pittsburgh facility. This water and other coal pit water were initially collected and treated by Wheeling-Pittsburgh prior to discharge into the Ohio River. Beginning in approximately 1978 increased volume of water and

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concentration of phenolic compounds in the water in the coal pits exceeded the capacity and capability of the Wheeling-Pittsburgh treatment facility. Since that time Wheeling-Pittsburgh has made an effort to treat the water within the limits of its treatment system, however, some water has been collected and discharged directly into the Ohio River. It also appears that contaminated groundwater from the perched zone has migrated to the lower zone in the alluvial deposits.

Attachment 1 to this Decree is a map of the facilities. It is a part of this Decree to provide a convenient means to identify areas and locations of importance. Items identified A-101, A-102, A-104, A-105, A-106, A-116, A-120, B-1, B-3, B-4, B-6, B-7, B-8, B-17A are wells which are used to monitor the perched groundwater. Items identified C-1, C-2, and C-3 are Recovery Wells 1, 2 and 3, respectively, which are groundwater recovery wells located in the perched groundwater zone. Items identified R-201, R-202 are wells which are used to monitor the lower groundwater zone.

The above-captioned action having been filed, a crossclaim by Wheeling-Pittsburgh having been filed and the parties, the UNITED STATES OF AMERICA, for the Administrator of the Environmental Protection Agency (EPA), the State of West Virginia, for the West Virginia Department of Natural Resources (WVDNR), Koppers Company, Inc. and Wheeling-Pittsburgh Steel Corporation desiring to resolve all matters arising out of the Complaint and Crossclaim in this action without litigation, by their respective attorneys have consented to the entry of this Consent Decree.

NOW THEREFORE, before the taking of any testimony, upon the pleadings, without trial, and without this Consent Decree constituting any evidence of liability or fault by any party hereto with respect to any allegation of the Complaint or the Crossclaim, and upon consent of the parties hereto, it is ORDERED AND DECREED as follows:

I. Jurisdiction and Venue

For the purposes of this Decree, this Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1345, and 33 U.S.C. §§ 407, 411 and 1319(b); the Court has personal jurisdiction over all defendants; venue is proper in this District because defendants reside in, do business in, and the cause of action arose within this District; and the Complaint states a claim upon which relief can be granted.

II. Goals

The primary goals of this Decree are to halt the unpermitted seeping and discharge of pollutants into the Ohio River, to restore the underlying groundwater layers to their potential for full use, to prevent future pollution, and to protect against endangerment to human health or the environment arising from present or prior operations or conditions at the facilities owned or operated by defendants in Follansbee, West Virginia. Additional goals of this Decree are to eliminate the seeping and discharge of contaminated groundwater from the Koppers facility onto the adjacent Wheeling-Pittsburgh facility and to reduce the level of phenolic compounds in the groundwater layers to no more than 2 parts per million (ppm). These goals are intended as desirable ends and not as standards. The standards for achievement of these goals are provided in subsequent paragraphs of this Decree.

III. Parties

The State of West Virginia has moved to intervene as a Plaintiff. The motion to intervene is hereby granted.

For the purposes of this Decree, each of the defendants shall be referred to and shall be treated individually and separately unless otherwise indicated.

IV. Actions Completed or In Progress

A. In order to prevent or minimize the unauthorized discharge of pollutants into the Ohio River from the coal pits located on Wheeling-Pittsburgh property and to minimize the seeping or discharge of groundwater from the Koppers facility into the adjacent Wheeling-Pittsburgh coal pits:

1. Koppers has installed a collection system located parallel to and approximately 30 feet from its eastern boundary opposite the southern tip of Wheeling-Pittsburgh's northern coal pit. This system, consisting of a gravel lined pit approximately 90 feet long, 4 feet wide and 15 feet deep and a recovery well (Recovery Well 1), is capable of collecting and pumping most of the water which had been entering the northern coal pit.

2. Since January 31, 1983, Recovery Well 1 has been pumping an average of 23,000 gallons per day of water contaminated with phenolic compounds to the Koppers biological treatment plant resulting in the collection and treatment of an average of 501 pounds per day of phenolic compounds.
 3. Since January 1977, Wheeling-Pitt has been collecting the water in its coal pits and has been treating it in its wastewater treatment system within the capacity and capability of that system.
- B. In order to address the groundwater contamination under the Koppers facility:
1. Koppers hired a hydrogeologic consultant who sampled groundwater monitoring wells at the facility from June through August of 1981 and analyzed for a number of parameters. Concentrations of phenols (4AAP) were found of up to 24,000 ppm in the perched zone and up to 4,400 ppm in the lower zone.
 2. WVDNR sampled several groundwater monitoring wells at the facility on January 6 and 7, 1982 and analyzed for phenols (4AAP). Concentrations were found of up to 6,600 ppm in the perched zone and up to 570 ppm in the lower zone.
 3. EPA sampled one groundwater monitoring well at the facility on October 20, 1982. The analysis indicated a concentration of phenols (4AAP) in the perched zone of 4,840 ppm.
 4. Koppers has taken the actions described in paragraphs IV.A.1. and 2., above.
 5. On February 23, 1983, Koppers began pumping from a second well (Recovery Well 2) located approximately 200 feet southwest of Recovery Well 1 opposite the northern tip of Wheeling-Pittsburgh's southern coal pit. This well has been pumping an average of 11,000 gallons per day of water contaminated with phenolic compounds to the Koppers biological treatment plant resulting in the collection and treatment of, an average of 41.6 pounds per day of phenolic compounds.

6. On September 28, 1983, Koppers began pumping from a third well (Recovery Well 3) located approximately 200 feet southwest of Recovery Well 2. This well has been pumping an average of 23,000 gallons per day of water contaminated with phenolic compounds to the Koppers biological treatment plant.
7. Koppers has been sampling the water pumped from Recovery Wells 1, 2, and 3 and from a number of groundwater monitoring wells. Koppers has analyzed samples from all of these wells for phenols (4AAP), pH, conductivity, total organic carbon (TOC) and temperature and has been determining the water level for the monitoring wells.
8. Koppers has installed and commenced operation of a piping system at its naphthalene still, Attachment 1, Item D-1, which eliminates the need for the solvent sump previously used at the still.
9. Wheeling-Pittsburgh has been sampling the water in its collection sump and has analyzed the samples for phenols (4AAP).

V. Plan of Action

In addition to the projects delineated in paragraph IV., above, Defendants shall undertake the measures outlined below. This work consists of four projects.

- A. Project I - In order to prevent the unauthorized seeping or discharge of pollutants into the Ohio River from the coal pits located on Wheeling-Pittsburgh property or from any location not currently identified or in existence as a point source, and to prevent the seeping or discharge of groundwater into the Wheeling-Pittsburgh coal pits:
1. Koppers and Wheeling-Pittsburgh shall ensure that no discharge of pollutants into the waters of the United States occurs other than in compliance with their respective NPDES permits issued pursuant to the Clean Water Act, 33 U.S.C. §§ 1251 et seq. (Clean Water Act).

2. Any NPDES permit issued to Wheeling-Pittsburgh for its Outfall 001 shall provide for sampling for compliance at a point or points prior to the entry of the coal pit water into the outfall until the project described in paragraph V.A.7., below, is operational at which time the sampling locations may be after the point of entry of the coal yard water into the outfall. This provision is conditioned upon Wheeling-Pittsburgh taking no action which would adversely affect the quality of the coal pit water or which would result in water or any pollutant other than coal pit water being added to the outfall below the point of entry of the coal pit water.
3. Koppers shall continue to collect and treat the groundwater contaminated with phenolic compounds in the manner described in paragraphs IV.A.2. and IV.B.5. and B.6., above, until such time as EPA and WVDNR determine that such action is no longer required and provide Koppers with notification of such under paragraph X.I., below.
4. Wheeling-Pittsburgh shall continue to collect and treat the coal pit water in the manner described in paragraph IV.A.3., above, until the latter of 18 months after the entry of this Decree (the date the project required in paragraph V.A.7., below, is to be operational) or the date resulting from any extension of time for completion of that project granted under paragraph IX, below. If at any time during the applicability of this paragraph Wheeling-Pittsburgh bypasses its treatment plant with the coal pit water it must within 24 hours of the commencement of the bypass notify EPA, WVDNR and Koppers verbally and within 5 days of the commencement of the bypass submit a report to EPA, WVDNR and Koppers which contains the following:
 - a. the actual or anticipated length of time of the bypass; and
 - b. a description of the events and reasons for the decision to commence the bypass.

5. Beginning within 30 days following the entry of this Decree, Wheeling-Pittsburgh shall sample the water in its collection sump once per week using grab samples, shall analyze the samples for phenols (4AAP), and shall once per month analyze for pH, conductivity, TOC and temperature and estimate the daily average volume of water pumped from the sump to its treatment facility. Wheeling-Pittsburgh shall submit to EPA, WVDNR and Koppers the results of such sampling and analysis for each 2 month period within 30 days of the end of such period. Wheeling-Pittsburgh shall also submit, with the above, the results of any additional sump sampling and analysis performed during each 2 month period. Sampling and analysis under this provision shall continue until the project described in paragraph V.A.7, below, is operational.
6. Koppers shall, no later than the date of entry of this Decree, submit to the State of West Virginia a request for modification of its current State NPDES permit. This request must provide information sufficient to allow the State to modify the permit to reflect the current situation at the manufacturing facility and the pumping and treating of the groundwater under this Decree.
7. Koppers shall, no later than 18 months after the entry of this Decree, place into operation a system designed to eliminate the seepage or discharge of contaminated groundwater from the Koppers facility into the Wheeling-Pittsburgh coal pits. This shall be accomplished on the following schedule:
 - a. No later than 6 months after the entry of this Decree, submit to EPA and WVDNR a proposed plan for the system described above with milestone dates.
 - b. No later than 2 months after receipt of the plan submitted under paragraph V.A.7.a., above, EPA and WVDNR shall jointly provide to Koppers their approval of the plan as submitted or with modifications and the reasons therefore. If EPA and WVDNR do not provide notice of approval within the above time period, the plan shall be considered approved as submitted. If 21 days after Kopper's receipt of a modified plan, negotiations between the parties do not result in full agreement on the plan, any party may apply to the Court for further order. Koppers shall have the burden of showing that the EPA/WVDNR modifications are not necessary or

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consistent with the goals of this Decree. The final approved or determined plan is incorporated by reference into and is subject to the provisions of this Decree.

B. Project II - Preliminary measures to address the perched groundwater zone contamination under the Koppers facility:

1. Beginning within 30 days following the entry of this Decree, Koppers shall perform the following sampling and analysis:
 - a. Recovery Wells 1, 2 and 3: sample once per month using grab samples and analyze for phenols (4AAP), pH, conductivity, TOC and temperature and estimate the daily average volume of water pumped to its treatment facility.
 - b. Monitoring Wells A-101, A-102, A-104, A-105, A-106, A-116, A-120, B-1, B-3, B-4, B-6, B-7, B-8, B-17A, R-201, R-202: sample once per month using grab samples, determine water level and analyze for phenols (4AAP), pH, conductivity, TOC and temperature. Water level determinations shall be made on the same day for all wells provided that consideration must be made of the effects of previous sampling at the wells so that the levels determined are representative. Well samples for other parameters may be taken on a staggered schedule at monthly intervals.
 - c. Recovery Wells 1, 2 and 3: sample by April 1, 1984 and at yearly intervals thereafter and analyze for the 65 priority pollutants and classes of pollutants designated as toxic pursuant to Section 307(a) of the Clean Water Act, 33 U.S.C. §1317(a), and found in regulation 40 C.F.R. §401.15, excluding the pesticides and metals. Analyses shall be conducted by GC-MS in accordance with EPA proposed methods 624 and 625 (EPA-600/4-82-057, July 1982), or in accordance with methods subsequently promulgated by EPA at 40 C.F.R. Part 136.

2. Koppers shall submit to EPA and WVDNR the results of the sampling and analysis described in paragraph V.B.1.a. and b., above for each 3 month period within 30 days of the end of each such period. Koppers shall also submit, with the above, the results of any additional monitoring well sampling and analysis performed during each 3 month period.
3. Koppers shall submit to EPA and WVDNR the results of the sampling and analysis described in paragraph V.B.1.c., above, within 60 days of the sampling date.
4. By May 30, 1984, Koppers shall pave the caustic plant area, Attachment 1 Item D-2.
5. By April 30, 1984, Koppers shall install a stainless steel liner in the concrete trench in the tar tank farm area, Attachment 1 Item D-3.
6. By March 1, 1984, Koppers shall initiate a test boring program to locate the edge of the perched groundwater zone in the area marked D-4 on Attachment 1. The program shall be completed by April 30, 1984.
- 7.a No later than 90 days after completion of the program described in paragraph V.B.6, above Koppers shall based upon the results of that program propose in writing to EPA and WVDNR a location or locations in area D-4 for the placement of recovery well(s). The proposal must include a discussion of the reasons for the location(s) chosen.
- b. Within 60 days of receipt of the proposal submitted under paragraph V.B.7.a., above, EPA and WVDNR shall jointly either approve the location(s) proposed by Koppers under paragraph V.B.7.a., above, or provide alternative location(s) and the reasons therefore. If EPA and WVDNR do not provide notice of approval within the above time period, the location(s) shall be considered approved as proposed. If 21 days after Kopper's receipt of alternate location(s), negotiations between the parties do not result in full agreement on well location(s), any party may apply to the Court for further order. Koppers shall have the burden of showing that the alternate location(s) are not reasonable as recovery well location(s).

- c. Within 60 days of approval or determination under paragraph V.B.7.b., above, Koppers shall install the recovery well(s).
 - d. Within 30 days of completion of recovery well installation under paragraph V.B.7.c., above, Koppers shall implement the same sampling and analysis program described in paragraph V.B.1.a. and c., above, for the recovery well(s).
- 8.a. By July 1, 1984, Koppers shall begin a study to determine the alternatives available to address the contamination situation at the tank car unloading area, Attachment 1 Item D-5.
- b. By October 1, 1984, Koppers shall submit in writing to EPA and WVDNR a report of its assessment of the contamination situation at D-5 and the alternatives available to alleviate the problem.

C. Project III - Remedial plan to address the perched groundwater contamination under the Koppers facility:

- 1. Koppers shall continue the collection, treatment, sampling, analysis and reporting required by paragraphs V.A.1 and 3 and V.B.
- 2. Koppers shall by October 1, 1984 submit to EPA and WVDNR in writing a comprehensive plan with actions designed to prevent the further contamination and migration of phenol into the groundwater. The plan shall address actions which can be taken which are consistent with the goals in paragraph II., above.
- 3. The plan shall include at least the following:
 - a. A complete description of each proposed action.
 - b. A discussion of the expected effect of each action on the phenol level in the groundwater.
 - c. An implementation schedule including significant milestones for each proposed action.

4. By November 1, 1984, EPA and WVDNR shall jointly provide to Koppers their approval of the plan as submitted or with modifications and the reasons therefore. If EPA and WVDNR do not provide notice of approval by the above date, the plan shall be considered approved as submitted. If 21 days after Kopper's receipt of a modified plan, negotiations between the parties do not result in full agreement on the plan, any party may apply to the Court for further order. Koppers shall have the burden of showing that the EPA and WVDNR modifications are not necessary or consistent with the goals of this Decree. The final approved or determined plan is incorporated by reference into and is subject to the provisions of this Decree.
5. The plan shall become effective for the purposes of implementation and enforcement on the date of receipt by Koppers of the approved plan as submitted, the modified plan or the date of any applicable order of the Court.
6. Following the receipt of the results of 3 months of sampling and analysis after the completion of the implementation of any plan under paragraph V.C., EPA and WVDNR shall jointly determine whether further remedial actions are feasible, necessary and consistent with the goals of this Decree and so notify Koppers. If Koppers objects to the determination under this paragraph, it may within 21 days of receipt of notification apply to the Court for further order. Koppers shall have the burden of showing that further remedial actions are not feasible, necessary and consistent with the goals of this Decree. If such actions are required, additional plan(s) will be requested by EPA and WVDNR and such plan(s) will be implemented using the procedure outlined in paragraph V.C.2. through 5, above.
7. Koppers has the right to propose additions or modifications to approved plans with the reasons therefore during the course of any projects undertaken. The submittal and approval process of those proposed changes shall parallel those described in paragraphs V.C.2 through 5, above.

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D. Project IV- In order to address the lower groundwater zone contamination under the Koppers facility:

1. Koppers shall within 90 days of the date of entry of this Decree submit to EPA and WVDNR a plan outlining a monitoring system to determine the extent of groundwater contamination in the lower zone. The plan must be certified by a qualified hydrogeologist and must contain at least the following:
 - a. The proposed location and manner of construction of monitoring wells.
 - b. The methods of sample collection and analysis to be used, including a discussion of the quality assurance measures to be followed during sampling, handling and analysis.
 - c. A discussion of the information used and basis for well location, depth and screened interval determinations, including any assumptions made in interpreting such information.
2. Within 60 days of receipt of the plan, EPA and WVDNR shall jointly provide to Koppers their approval of the plan as submitted or with modifications and the reasons therefore. If EPA and WVDNR do not provide notice of approval within the above time period, the plan shall be considered approved as submitted. If 21 days after Koppers receipt of a modified plan, negotiations between the parties do not result in full agreement on the plan, any party may apply to the Court for further order. Koppers shall have the burden of showing that the EPA/WVDNR modifications are not necessary to achieve the purposes described in paragraph V.D.1., above. The final approved or determined plan is incorporated by reference into and is subject to the provisions of this Decree.
3. The plan shall become effective for the purposes of implementation and enforcement on the date of receipt by Koppers of the approved plan as submitted, the modified plan or the date of any applicable order of the Court.

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4. Within six months of the completion of implementation of the plan, Koppers shall submit to EPA and WVDNR a report outlining the nature and extent of groundwater contamination in the lower zone.
5. Within 60 days of receipt of the report, EPA and WVDNR shall determine jointly whether remedial action, which might include but is not limited to pumping and treating contaminated groundwater, is required in the lower zone and notify Koppers of that determination. If it is determined that remedial action is required, a plan or plans will be requested by EPA and WVDNR and such plans will be implemented using the procedure outlined in paragraph V.C.2. through 7., above with the initial plan to be submitted by Koppers to EPA and WVDNR within 6 months of notification.

VI. Civil Penalties

- A. The Defendants shall pay a civil penalty pursuant to 33 U.S.C. § 1319 in the amount of \$25,000 by tendering a check in that amount within 30 days of the entry of this Decree. Of this amount \$17,000 shall be paid to the United States and \$8,000 shall be paid to the State of West Virginia.
- B. Any payment made by Defendants to the United States pursuant to this Decree shall be made payable to the Treasurer of the United States and be sent to the Regional Counsel, United States Environmental Protection Agency, Region III, 6th & Walnut Streets, Philadelphia, Pennsylvania 19106.
- C. Any payment made by Defendants to the State of West Virginia pursuant to this Decree shall be made payable to West Virginia Department of Natural Resources and be sent to the Director of the Department of Natural Resources, Building 3 - 1800 Washington Street, East, Charleston, West Virginia 25305.

VII. Reports, Notifications and Information Exchange

- A. Upon entry of this Decree, Koppers shall file a copy of this Decree for recordation with the appropriate land recording office, and cause it to be indexed under Koppers Company, Inc.

B. Koppers shall notify EPA and WVDNR in a detailed report every 90 days of the progress on the tasks identified in paragraphs V.B.4. through 8., V.C. and D above. The first such report shall be submitted 90 days from the entry of this Decree. The reports shall include a statement of:

1. The date any task was begun or achieved;
2. Any problems which may have occurred which may cause delay in achieving any future tasks;
3. The actions taken to alleviate the problems described in paragraph VII.B.2., above.
4. Progress in completing the tasks in the plan during that 90 day period; and
5. Results of monitoring and analysis of all samples, as required above.

C. If any event occurs which causes or may cause delay or other noncompliance in the achievement of any task in paragraphs V.A. through E. above, the defendants shall notify EPA and WVDNR orally within 5 days of the occurrence of this event and shall describe in detail in a report to be submitted to EPA and WVDNR within 15 days of the occurrence of this event, to the best knowledge of the defendants:

1. the anticipated length of the noncompliance;
2. the precise cause or causes of the noncompliance;
3. the efforts taken and to be taken by the defendants to prevent or minimize the noncompliance;
4. the timetable by which those measures will be implemented;
5. the date by which the task will be achieved;
6. a description of any future tasks which could be affected by the noncompliance; and
7. an explanation of the reasons for any anticipated future noncompliance and the measures to be taken immediately to prevent or minimize anticipated noncompliance.

Such submission shall not excuse the obligation of defendants to comply with the requirements set forth in this Decree, unless excused by action of the requirements of paragraph IX, below. If a defendant fails to report as required by this paragraph, such defendant is precluded from requesting an extension of time under paragraph IX, below, and such defendant is subject to paragraph VIII, below.

D. Defendants shall notify EPA and WVDNR in writing (certified mail, return receipt requested) at least 30 days in advance of settlement or intent to convey any interest in the site or business. No conveyance of title, easement, or other interest in the site or business shall be consummated by defendants without complete provision for the fulfillment by defendants of all requirements of this Decree, including, if required, submission to EPA of a performance bond sufficient to assure completion of the remedial work.

E. Defendants, EPA and WVDNR and their respective consultants shall cooperate with each other, and each will provide to the other on request information in its possession regarding the matters covered by this Decree.

F. All reports and plans required to be submitted by defendants by this Decree shall be signed by a principal executive officer of at least the level of vice president or signed by such person's duly authorized representative as defined in 40 C.F.R. § 122.22.

VIII. Remedies in Event of Breach

A. Subject to paragraph IX, below and notwithstanding compliance with paragraph VII.C., above, upon written demand by Plaintiffs, defendants shall pay a stipulated penalty in the following amounts for each day that defendants fail to comply with each requirement of this Decree or that defendants are late in taking any action required to be taken by them under this Decree or under any schedule for action established pursuant to this Decree:

<u>Days of Violation</u>	<u>Penalty Per Day</u>
1 to 30 days	\$ 450
31 days to 60 days	\$ 900
More than 60 days	\$4500

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Of the amount of any stipulated penalty, two-thirds shall be paid to the United States and one-third shall be paid to the State of West Virginia. In addition, Plaintiffs reserve the right to institute contempt proceedings in the United States District Court.

B. Defendants shall within 15 days of receipt of written demand pursuant to paragraph VIII.A., above, pay such stipulated penalty or formally contest such penalty before this Court.

C. Wheeling-Pittsburgh is a crossclaimant in this action and shall have the right to enforce the requirements in paragraph V.A.7., above, which relate to the seepage or discharge of contaminated groundwater from the Koppers facility onto the Wheeling-Pittsburgh coal pits.

IX. Delay in Performance

A. Any failure of defendants to comply with any requirement of this Decree where such failure is a result of any act of God or other circumstances beyond the reasonable control of defendants as determined under the procedure in paragraph IX.C., below, shall not be a violation of this Decree. Defendants shall report to EPA and WVDNR in writing of any and each failure in accordance with the requirements of paragraph VII.C., above, and request an extension of time. The burden of proving that any delay is caused by circumstances beyond the reasonable control of defendants shall rest with defendants. Increased costs or expenses associated with the implementation of actions required by this Decree or changed business conditions shall not, in any event, be a basis for extensions of time.

B. To the extent that events which delay defendants' compliance with this Decree have been or will be caused by circumstances beyond defendants reasonable control, as defined by paragraph IX.A., above, the time for performance hereunder shall be extended for the time period of such delay

C. If EPA, WVDNR and defendants agree upon a change in schedule caused by circumstances described in paragraph IX.A., above, such change shall be incorporated by reference into the plan. If EPA, WVDNR and defendants can not reach agreement concerning the nature or the circumstances causing a delay or the length of such delay, the EPA/WVDNR position shall be effective unless defendants petition the Court for a contrary order within 10 days of notification of the affected defendant of the EPA/WVDNR final position.

D. For the project in paragraph V.A.7., above, the procedure under paragraph IX is modified as follows:

1. Any report under paragraph IX.A., above, must be made to EPA, WVDNR and Wheeling-Pittsburgh.
2. The decision making process in paragraph IX.C., above, is not applicable and is replaced by:

If EPA, WVDNR, Koppers and Wheeling-Pittsburgh agree upon a change in schedule caused by circumstances described in paragraph IX.A., above, such change shall be incorporated by reference into the plan. If agreement can not be reached concerning the nature or the circumstances causing a delay or the length of such delay, any party may petition the Court for a determination.

X. General Provisions

A. Applicability

Where a provision of this Decree by its terms is applicable to only one defendant, the other defendant shall not be responsible for compliance with or the consequences of such provision.

B. Principal Contacts

The following individuals are to receive, where applicable, plans, reports, monitoring results, and notifications required by this Decree:

EPA: Office of Regional Counsel
Environmental Protection Agency, Region III
Curtis Building
Sixth and Walnut Streets
Philadelphia, Pennsylvania 19106
Attention: Mr. Ralph Siskind (3RC20)
(215) 597-8542

and

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WVDNR: David Robinson, Chief
West Virginia Department of Natural Resources
Water Resources Division
1201 Greenbriar Street
Charleston, West Virginia 25301
(304) 348-2107

Koppers: Templeton Smith, Esq.
Koppers Company
Koppers Building
Pittsburgh, Pennsylvania 15219
(412) 227-2636

Wheeling-Pittsburgh: William R. Samples
Manager, Environmental Control
Wheeling-Pittsburgh Steel Corp.
DuVall Center
Wheeling, West Virginia 26003
(304) 234-2936

C. Definitions

The parties agree that all terms used in this Decree, including the terms "discharge", and "waters of the United States" shall have the same meaning as under the Clean Water Act.

D. Right of Entry

The defendants agree that EPA, WVDNR and their authorized representatives shall have the right of entry at reasonable times to and upon the defendants' facilities which are subject to this Decree for the purpose of carrying out any inspections and conducting any tests which EPA and WVDNR believe are necessary to ensure that the purposes of this Decree are effectuated.

E. Permits

Defendants agree to make suitable and appropriate application for all required Federal, State, and local permits, including, but not limited to, those permits required under the Clean Water Act, the Resource Conservation and Recovery Act and local ordinances, for the work performed pursuant to this Decree; to take whatever actions are required by those laws to bring the site and any activities conducted thereon into

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compliance with those statutes; and to do such work in compliance with the Occupational Safety and Health Act, 29 U.S.C. § 651, et seq. This Decree shall not be construed to be the issuance of a permit, replacement for a permit, or commitment to issue a permit, nor shall it be construed to authorize or require any increase or expansion in defendants' plant size or capacity.

F. Other Obligations

This Decree shall in no way relieve defendants or their officers, agents, servants, employees, successors and assigns, of their obligation to comply with all applicable Federal, State, and local statutes, regulations, and ordinances. This Decree shall not limit the rights of the United States, EPA or WVDNR to take other action to enforce compliance with applicable laws or regulations. This Decree shall not limit the rights of the plaintiffs regarding claims which arise or exist subsequent to the entry of this Decree. This Decree may not be construed to limit or waive the rights of any nonparty to this Decree to enforce independent rights or remedies.

The defendants are ultimately responsible for designing, implementing and monitoring all remedial measures required of defendants by this Decree, and no advice, guidance, suggestions or comments by EPA or WVDNR on plans and reports submitted by the defendants shall be construed to relieve the defendants of this responsibility or transfer any of the defendants' liabilities or obligation under this Decree to EPA or WVDNR.

G. Expense of Compliance

Each defendant shall fund all capital expenditures and pay all expenses necessary to develop, implement, operate and complete any remedial or other action applicable to it which is necessary to comply with this Decree. At EPA and WVDNR's joint request, each defendant shall, in order to insure the funding of said remedial or other action applicable to it, obtain a performance bond in an amount up to one hundred percent (100%) of the estimated remaining cost of the action as required by this Decree. Such bond shall be obtained no later than 15 days after it is required and shall be maintained in full force and effect until the date that this Decree is terminated.

H. Confidentiality and Disclosure

All data, information, remedial plans and other documents produced by defendants in the course of implementing this Consent Decree shall be available to the public, unless identified as confidential by the defendants in conformance with 40 C.F.R Part 2. The plans, sampling and monitoring data required by this Decree shall not be considered confidential.

I. Continuing Jurisdiction

The Court retains jurisdiction of this action for the purpose of resolving disputes pursuant to any provision hereof, and for the purpose of enabling defendants or plaintiffs to apply to the Court for any further orders which may be necessary to construe, carry out, or enforce compliance with the terms of this Decree.

J. Binding Effect

The provisions of this Decree shall apply to and be binding upon the defendants, their officers, directors, agents, servants, successors and assigns, and all persons, firms, and corporations acting under, through or for them, and upon those persons, firms and corporations in active concert with them in operations at this site. Defendants shall give notice of the existence of this Decree to any successors or assigns.

K. Termination

The provisions of this Decree shall terminate upon the receipt by defendant(s) and the Court of written notice from EPA and WVDNR that the requirements hereof have been successfully completed. This does not affect either defendant's right to request a determination by EPA and WVDNR or the Court on termination of any or all requirements of this Decree.

L. Public Participation

The parties agree and acknowledge that final approval and entry of this Decree is subject to the requirements of regulation 28 C.F.R. §50.7. That regulation provides that

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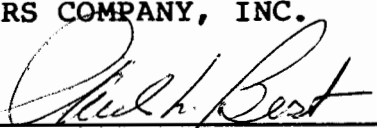
notice of proposed consent decrees be given to the public and that the public shall have at least 30 days to make any comments.

Judgment entered in accordance with the foregoing
this _____ day of _____, 1984.

WILLIAM M. KIDD
United States District Judge

Approved and Consented to:

KOPPERS COMPANY, INC.




PAUL BOST
Vice President
Koppers Company, Inc.
Koppers Building
Pittsburgh, Pennsylvania 15219

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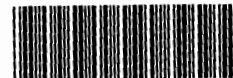
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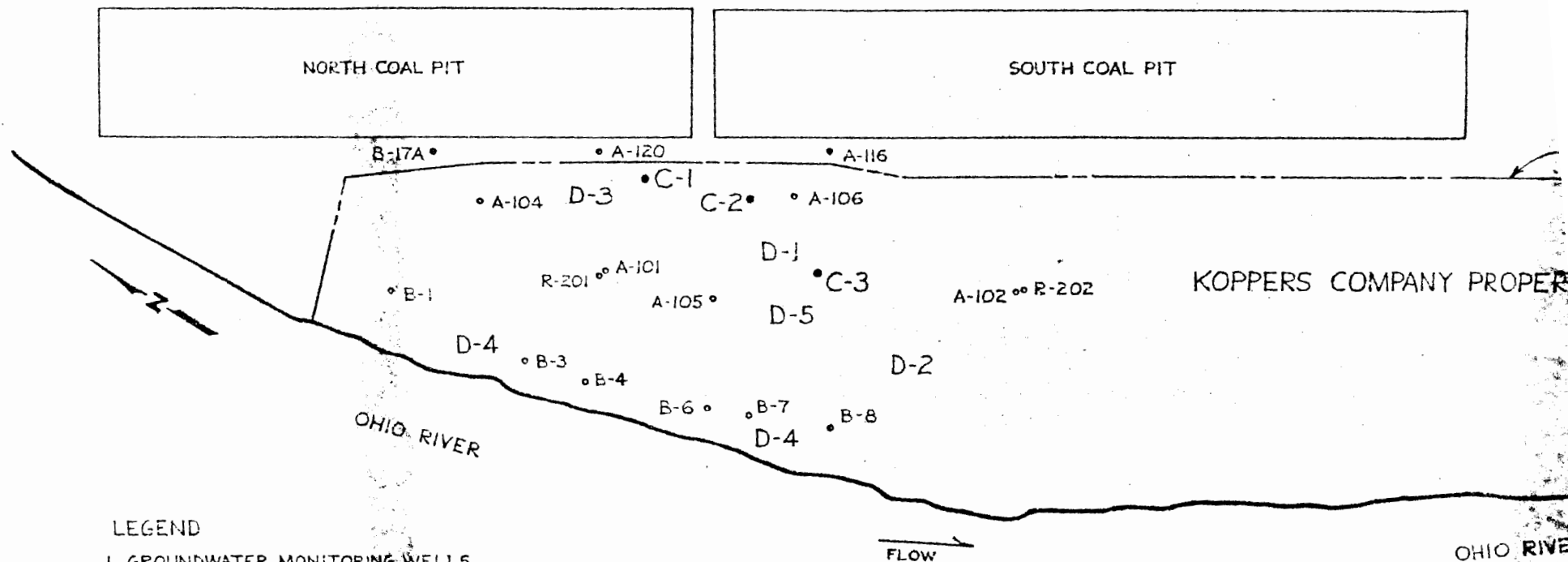


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ATTACHMENT I: LAYOUT OF FACILITIES - FOLLANSBEE, WEST VIRGINIA

FOR CONSENT DECREE: UNITED STATES OF AMERICA AND STATE OF WEST VIRGINIA V. KOPPERS COMPANY, .
WHEELING-PITTSBURGH STEEL CORPORATION, CIVIL ACTION NUMBER 83-0127-ORIGINAL
(Page)

WHEELING-PITTSBURGH STEEL CORPORATION PROPERTY



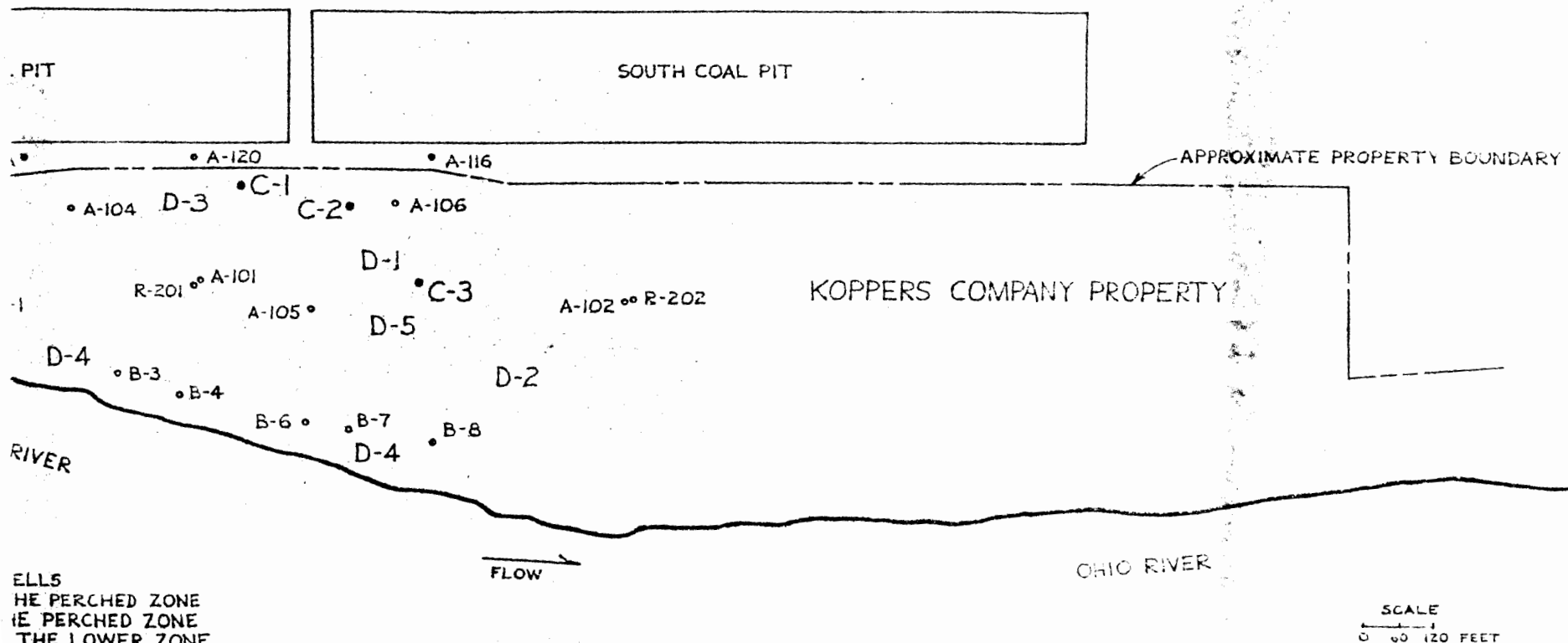
LEGEND

1. GROUNDWATER MONITORING WELLS
 - A-101: 2.5 INCH WELL IN THE PERCHED ZONE
 - B-1: 1.5 INCH WELL IN THE PERCHED ZONE
 - R-201: 2.5 INCH WELL IN THE LOWER ZONE
2. • C-1: GROUNDWATER RECOVERY WELL
IN THE PERCHED ZONE
3. D-1: AREA OF SPECIFIC PROJECT

IT OF FACILITIES - FOLLANSBEE, WEST VIRGINIA

UNITED STATES OF AMERICA AND STATE OF WEST VIRGINIA V. KOPPERS COMPANY, INC. AND
WHEELING-PITTSBURGH STEEL CORPORATION, CIVIL ACTION NUMBER 83-0127-W(K)

WHEELING-PITTSBURGH STEEL CORPORATION PROPERTY



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SDMS US EPA Region III

Imagery Insert Form

Site Name: Follansbee Site

Document ID: 2094570

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Layout of Facilities Map PFE 7 SA



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